IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Civil Revision Application No.226 of 2006

Shri Anand M. Kale & ors. .. Applicants / Petitioners
(Org.Deft.No.9)
v/s.
Shri Vilas N. Marathe & anr. .. .. Respondents
(Org.Plffs.)

Mr.Kiran N. Joshi for Applicants / Petitioners.

Mr.S.R.Ganbavale for Res.Nos.1 & 2.

CORAM : ABHAY S. OKA, J.

DATED : 23rd April, 2007

ORAL JUDGMENT :

1. On the last date, this Civil Revision Application was heard finally. The challenge in this Civil Revision Application is to the judgment and order dated 4th October 2006 passed by the learned Civil Judge, Senior Division, Raigad at Alibag. By the said judgment and order, the issue of jurisdiction was decided by the Trial Court. The Respondents herein filed an Application for grant of probate under the provisions of the Indian Succession Act, 1925 (hereinafter referred to as "the said Act, 1925"). The probate was sought in respect of the alleged last Will of late Gajanan Marathe. An objection was raised on behalf of one of the opponents in the said Application to the jurisdiction of the Trial Court to entertain the Application for probate. On the basis of the said Application, a preliminary issue was framed by the learned Trial Judge,

which has been decided by the impugned order.

2. The objection raised by one of the Opponents in the Application for probate to the jurisdiction of the Trial Court was that the Court at Alibag had no jurisdiction to entertain and try the Application. A contention was raised that the deceased had a fixed place of abode within the jurisdiction of Greater Mumbai. Accordingly, it was contended that the Application for probate could not have been filed in the Court of Civil Judge, Senior Division, Raigad at Alibag.

3. The learned Trial Judge held that his Court is having jurisdiction over Roha where the deceased had fixed place of abode.

4. After having considered the submissions of learned Counsel appearing for the parties, I find that the approach of the learned Trial Judge is erroneous. The jurisdiction of the Court to entertain an Application for grant of probate is governed by Section 270 of the said Act, 1925. Section 270 reads thus:-

> " **270. When probate or administration may be granted by District Judge.** - Probate of the Will or letters of administration to the estate of a deceased person may be granted by a District Judge

> under the seal of his Court, if it appears by a petition, verified as hereinafter provided, of the person applying for the same that the testator or intestate, as the case may be, at the time of his decease had a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the Judge."

One of the Courts having jurisdiction is where the deceased had a fixed place of abode. The other Court having jurisdiction is where any property, movable or immovable, of the deceased is situated within its jurisdiction. The perusal of the Application for probate made by the Respondents does not disclose that the deceased was having any property, either movable or immovable, within the jurisdiction of the Court of the Civil Judge, Senior Division, Raigad at Alibag. Thus, the said Court will get jurisdiction, provided it is established that the deceased had a fixed place of abode at Roha, as contended by the Respondents. The contention of the Petitioners is that deceased had a fixed place of abode within Greater Mumbai. It is obvious that a finding as regards the fixed place of abode of the deceased could have been recorded by the learned Trial Judge only after the parties had led evidence on this aspect. As of today, the parties have not led any evidence. The issue of jurisdiction could not have been decided without the parties leading evidence. Only on this

ground, the impugned order requires to be set aside. The Application for probate has been filed in the year 2004. Therefore, the issue of jurisdiction will have to be decided along with all other issues arising in the Application.

5. Hence, I pass the following order:-

O R D E R

. The impugned judgment and order dated 4th October 2006 passed by the Civil Judge, Senior Division, Raigad at Alibag, is quashed and set aside.

. The issue of jurisdiction shall be decided afresh by the Trial Court along with the main Application for probate.

. Hearing of the Application for probate is expedited.

(ABHAY S. OKA, J.)